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# CASE ANALYSIS ON SOOBARAMONEY V. MINISTER OF HEALTH KWAZULU-NATAL (1997)

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Avantika Singh, LL.M., Maharashtra National Law University, Aurangabad  
Graduated from Dr. Ram Manohar National Law University, Lucknow (B.A. LL.B. Hons.)

## INTRODUCTION

*Soobramoney v. Minister of Health Kwazulu-Natal*<sup>1</sup> is the landmark judgment as it was the first case in South Africa which dealt with the socio-economic rights of an individual. This case paved a path for further discussion on this matter. Soobramoney, an Indian origin South African was denied dialysis treatment in a public hospital because of restrictive guidelines by the hospital. This case has extensively discussed the scope of Section 27 of the Constitution of South Africa which is right to access to health care services. The research paper tries to analyse the judgment of the Court. It is delivered by 10 judges of the Constitutional Court of South Africa where majority judgment was written by Justice Chaskalson, whereas Justice Madala and Justice Sachs had given the concurring judgment.

## FACTS

Thiagraj Soobramoney who was an appellant in this case is a 41-year-old unemployed man. He was suffering from major heart disease and diabetes which caused him a stroke. Subsequently all this had led to failure of his kidneys. For his treatment he went to Addington state hospital which is a public hospital in Durban. But due to limited number of resources, facilities and restrictive hospital budget, the hospital authorities cannot provide dialysis treatment to him. According to hospital policy the patient suffering from acute renal failure {which is reversible and cured} will be treated immediately but any patient suffering from chronic renal failure {which is irreversible} has to follow certain guidelines setup by the hospital. The guidelines provided that the patient to be given dialysis treatment has to undergo kidney transplant and an organ donor has to be found for the same. Such transplant will be allowed only if that patient is free of significant vascular or cardiac disease. The appellant who was a patient of chronic renal failure was also suffering from ischaemic heart disease and

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<sup>1</sup> 1997 (12) BCLR 1696 (CC).

cerebro-vascular disease and thus denied treatment from the hospital. The life of the appellant can be prolonged by the regular dialysis treat. The appellant moved to the High Court against the decision of the hospital authorities, but the High Court rejected the contentions raised by him. The matter finally reached to the Constitutional Court of South Africa, which is the apex Court of South Africa to resolve the above issue.

## ISSUES RAISED

Whether the treatment for chronic illness which can prolong life will be regarded as “*emergency medical treatment*” under Section 27 of the Constitution of South Africa or not?

## ARGUMENTS ADVANCED

### BY APPELLANT-

The appellant urges that his constitutional right has been violated by state Hospital by refusing him dialysis treatment to keep him alive. He has right to be treated in the State hospital without any charge as provided under **Section 27(3)** and **Section 11** of the 1996 Constitution of South Africa

Section 27(3) provides that-

“*No one may be refused emergency medical treatment*”

Section 11 provides that-

“*Everyone has the right to life.*”

To support his argument, the appellant relied on an Indian Supreme Court judgment *Paschim Banga Khet Mazdoor Samity and others v. State of West Bengal and another*<sup>2</sup>.

### BY RESPONDENT-

The argument of the respondent was that because of restrictive budget and scarcity of resources of the hospital they are unable to provide treatment to the appellant.

## JUDGMENT

### MAJORITY JUDGMENT WRITTEN BY JUSTICE CHASKALSON –

- The majority judgement delivered by Justice Chaskalson denied relief to the appellant  
In the judgment Justice Chaskalson clarified that the duty imposed on the State by Section 27 of the Constitution is dependent on the resources available to the State. Section 27(2) clearly provides that the State has to provide measures *within its available resources*. In

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<sup>2</sup> AIR 1996 SC 2426.

the present case, the Department of Health in KwaZulu-Natal do not have sufficient funds to bear the cost of treatment of the particular patient as they serve whole of KwaZulu-Natal public. Addington Hospital do not have enough facilities and staff to treat all patients suffering from chronic renal failure. If such benefit is extended to the appellant, then State will be under the obligation to provide treatment to others in the same condition. This would disrupt the State's expenditure. Justice Chaskalson clarified in his judgment –

*“A court will be slow to interfere with rational decisions taken in good faith by the political organs and medical authorities whose responsibility it is to deal with such matters.”*

- The Appellant who relied on the Indian Supreme Court judgment *Paschim Banga Khet Mazdoor Samity and others v. State of West Bengal and another*<sup>3</sup> to support his argument was dismissed by the Court. In the above case the person met with an accident suffered serious head injuries and brain haemorrhage which immediately required medical treatment. He was turned down by various hospitals citing lack of medical facilities or no beds available to admit him. According to Justice Chaskalson the Indian case is a clear example of medical emergency and rightly falls under Section 27(3) which differs from the present case presented before them. He distinguished Indian Supreme Court judgement from the Soobramoney case. In India, “*right to medical treatment*” is inferred from “*right to life*” provided under Article 21 of the Indian Constitution whereas in South Africa it is specifically provided under Section 27 of the South African Constitution. It is directly dealt in Section 27. The right provided under Section 27(3) will be implemented only during the emergency medical cases. The case of Soobramoney does not fall as an emergency medical case and thus Section 27(3) is not applicable here.

#### **CONCURRING JUDGMENT BY JUSTICE THOLIE MADALA –**

- Justice Madala agreed that the appellant case fails to come under the purview of Section 27(3) of the South African Constitution. He also agreed with the analysis of Section 27 provided by Justice Chaskalson in his judgment that Section 27(3) will only be applicable in sudden emergency situations. According to him the fundamental rights provided in Chapter 2 of the South African Constitution is not absolute in nature but limited one. Section 27 which deals with the right of an individual to access health care services is restricted by section 27(2) which states that “*the state must take reasonable legislative and*

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<sup>3</sup> *Id.*

*other measures, within its available resources, to achieve the progressive realisation of each of these rights.”*

- Justice Madala in his judgment provided additional suggestions regarding this issue.
  - (i) As the appellant was suffering from severe heart disease and diabetics, he is not applicable for kidney transplant and thus denied dialysis treatment. For chronic renal failure patients' haemodialysis is the most effective treatment but due to scarcity of staff, machines, and budget the hospital is unable to provide the treatment to the appellant. Continuing Ambulatory Peritoneal Dialysis (CAPD) is an alternative treatment for those who cannot afford haemodialysis treatment. He suggested that the patients can opt for CAPD treatment. To reduce the burden of public sector, private sector should provide CAPD alternative as well. The appellant who first was operated in private hospital but discontinued due to lack of funds was not advised by this alternative by the private hospital. In such situation private hospital must be held accused but as private hospital is not a party, he did not death in detail with the issue.
  - (ii) He suggested that education campaign must be organised so that citizens must be informed by repercussions of renal failure, hypertension, and diabetes. They must also be informed about the diet and proper nutrition to increase their life expectancy.

### **CONCURRING JUDGMENT BY JUSTICE SACHS –**

Justice Sachs agreed with the judgment of Justice Chaskalson. He added that the Justice Chaskalson's judgment is not just limited to the scarcity of resources but beyond that. He accepted the fact that if a government is unable to benefit all persons in the same situation no benefit should be provided to anyone. According to him Courts are not the appropriate forum to decide on the medical choices for the patient instead Court should abide by the decision taken by people who are better equipped with.

### **ANALYSIS**

- In this case the Court failed to recognise Section 11 of the South African Constitution which protects right to life of an individual. In India, Court had adopted a wider approach to interpret right to life which includes right to health whereas in South Africa the Court had

given preference to Section 27 instead of Section 11. In the case of *Paschim Banga Khet Mazdoor Samity and others v. State of West Bengal and another*<sup>4</sup>, the Supreme Court of India had given predominance to Right to life which include health care services to preserve human life-

*“Preservation of human life is thus of paramount importance. The Government hospitals run by the State and the medical officers employed therein are duty bound to extend medical assistance for preserving human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.”*

- This case clearly falls under the category of “*emergency medical treatment*” provided in Section 27(3) of the South African Constitution. But sadly, this was not recognised by the Court. Soobramoney was not provided with the concerned medical treatment on time. The last resort to prolong his life was regular renal dialysis, that’s why the Court should have had regarded it as emergency medical situation.
- According to the Constitutional Court of South Africa which upheld that due the scarcity of resources, the State and medical authorities could not provide immediate treatment to the appellant. But this is not a valid justification. Literal and strict interpretation of Section 27 has been done by the Court. In *Paschim Banga* case the Supreme Court of India held that the State cannot ignore from its duties citing financial constraints and same should be applied in this case-

*“It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done. In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints”*

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<sup>4</sup> *Id.*

Thus, it is the constitutional obligation of the State to ensure medical facilities to an individual which is a fundamental right under South African Constitution and State cannot evade from its duties.

- The decision of the Court is against the human rights perspective. WHO has regarded “*right to health*” as a fundamental right of a human being. Even UDHR under Article 25(1) has recognised right to health -

*“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”*

South Africa had ratified UDHR and being member of WHO failed to incorporate this human rights perspective in their judgment which led to denial of human rights of the appellant.

- The Constitutional Court of South Africa had not played proactive role in protecting rights of an individual by not providing him judicial relief. Instead, the Court held that it will not be interfering in the decision-making power of the government and medical authorities.

## **DEVELOPMENT OF THE LAW**

The judgment of this case was severely criticised as the Constitutional Court of South Africa failed to protect the socio-economic rights of an individual and overlooked the human rights perspective. After this judgment, another landmark case *Government of the Republic of South Africa and Others v. Grootboom and Others*<sup>5</sup> came before the Constitutional Court of South Africa. In this case 510 children and 390 adults including Mrs Grootboom were respondents, who were evicted from their informal homes as they had unlawfully occupied the private land. They were forcefully removed from their settlements and were rendered homeless as their houses were burnt, bulldozed, and destroyed. The basis of their argument was that it is the State’s obligation under Section 26 of the South African Constitution which provides for “*right*

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<sup>5</sup> 2000 (11) BCLR 1169 (CC).

to adequate housing” and Section 28(1)(c) which guarantees “right to shelter to children.” This case is relevant because in this case Court evolved test of reasonableness to evaluate measures adopted by State to implement socioeconomic rights. Earlier in the Soobramoney case, Court refused to interfere in the rational decisions which are taken in good faith by State and medical authorities. “However, after the judgement in the Grootboom case it appears that the court will not investigate the rationality and bona fides of the executive and the legislature but will rather ask whether the socio-economic programme and the implementation thereof was reasonable.”<sup>6</sup> Reasonableness to be understood in the context of the Bill of Rights and to be determined from the facts of each case.

There is another landmark case dealing with medical health care services that is *Minister of Health and Others v. Treatment Action Campaign and Others*<sup>7</sup> (TAC case). In this case the government decided to adopt a policy for treatment of transmission of HIV/AIDS from mother-to-child after 13th International Conference on HIV/AIDS that took place in Durban. According to the government policy drug nevirapine which is used for the treatment of HIV/AIDS will be made available to the selected pilot sites for a period of 2 years. In these sites the effect of this drug will be evaluated and monitored. From this gathered information a national policy will be developed throughout the country and then only nevirapine can be made available in the public health sector outside pilot sites. This was challenged on the ground that availability of this drug was only restricted to the pilot sites thereby infringing the Section 27 of the South African Constitution which guarantees everyone has “right to access to health care services.” In this case, same approach was applied by the Court as followed in *Soobramoney* and *Grootboom* case. According to the Court, Subsections (1) and (2) of Section 27 are interconnected and interlinked. The language used in Subsection (2) that is “each of these rights” refer to the rights mentioned in Section 27 (1). The Constitutional Court of South Africa finally concluded that such government policy is not reasonable and violating state’s obligations under Section 27(2) read with Section 27(1)(a) of the South African Constitution. It ordered the government to remove such restrictions and make nevirapine available throughout public health sector outside the pilot sites for prevention of mother-to-child transmission of HIV.

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<sup>6</sup> Linda Jansen van Rensburg, *Interpreting Socio-Economic Rights - Transforming South African Society*, 6 Potchefstroom ELEC. L.J. 1, 8 (2003).

<sup>7</sup> 2002 (10) BCLR 1033 (CC).

## CONCLUSION

The Soobramoney case is a bad precedent as it failed to protect the socio-economic rights of an individual. The judgment was the first of its kind and grabbed lot of media attention. The effect of the decision was that Soobramoney died immediately after this judgment. The Court was heavily criticized for its restrictive approach adopted in this case while interpreting “*right to access health care services*” and even did not invoke “*right to life*” under Section 11 of the South African Constitution.

The Constitutional Court of South Africa which is the supreme Constitutional Court and seen as a guardian to protect fundamental rights of the citizens refused to consider the international human rights perspective. Thereby, no relief was provided to the appellant and thus causing injustice to him. The approach of Indian Supreme Court must be appreciated as it adopted a broader approach and invoked “*right to life*” to protect “*right to health*” of an individual in the landmark case of *Paschim Banga Khet Mazdoor Samiti*. The indifferent approach of the Constitutional Court of South Africa in *Soobramoney* case led to the evolution of test of reasonableness in *Grootboom* case to check the measures implemented by State to protect the socio-economic rights.